

SECOND REGULAR SESSION

[PERFECTED]

HOUSE BILL NO. 2097

91ST GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES COPENHAVER, BERKOWITZ, SHOEMYER (9),
SMITH AND BRITT (Co-sponsors).

Read 1st time March 5, 2002, and 1000 copies ordered printed.

Read 2nd time March 6, 2002, and referred to the Committee on Agriculture, March 7, 2002.

Reported from the Committee on Agriculture, April 17, 2002, with recommendation that the bill Do Pass.

Taken up for Perfection May 1, 2002. Bill ordered Perfected and printed, as amended.

TED WEDEL, Chief Clerk

4954L.01P

AN ACT

To repeal sections 413.005, 413.015, 413.055, 413.065, 413.075, 413.085, 413.115, 413.125, 413.135, 413.145, 413.155, 413.165, 413.225, and 413.227, RSMo, and to enact in lieu thereof fourteen new sections relating to weights and measures, with penalty provisions.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 413.005, 413.015, 413.055, 413.065, 413.075, 413.085, 413.115,
2 413.125, 413.135, 413.145, 413.155, 413.165, 413.225, and 413.227, RSMo, are repealed and
3 fourteen new sections enacted in lieu thereof, to be known as sections 413.005, 413.015,
4 413.055, 413.065, 413.075, 413.085, 413.115, 413.125, 413.135, 413.145, 413.155, 413.165,
5 413.225, and 413.227, to read as follows:

413.005. As used in sections 413.005 to 413.229, unless the context clearly indicates
2 otherwise, the following words and terms mean:

3 **(1) "Accurate", any piece of equipment that conforms to the standard within**
4 **applicable tolerance and other performance requirements;**

5 **[(1)] (2) "Commercial [device] weighing and measuring equipment", [any weighing**
6 **or measuring device] devices commercially** used in **[commerce] or employed** to establish the
7 size, quantity, extent, area or measurement of quantities, things produced or articles for
8 distribution or consumption, purchased, offered or submitted for sale, hire or award, or in

EXPLANATION — Matter enclosed in bold faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

9 computing any basic charge or payment for services rendered on the basis of weight or measure,
10 and includes any accessory attached to or used in connection with a commercial **weighing or**
11 **measuring** device when such accessory is so designed or installed that its operation affects [or
12 may affect] the accuracy of the weighing or measuring device;

13 [(2)] (3) "Correct", **equipment** that[, in addition to being] **is accurate**[, a device] **and it**
14 meets all applicable specifications[, performance and installation] **and** requirements;

15 [(3)] (4) "Director", the director of the department of agriculture, or his or her designated
16 representative;

17 [(4)] (5) "Division", the division of weights and measures of the department of
18 agriculture;

19 [(5)] (6) "Net **mass**" or "**net weight**", the weight of a commodity excluding any
20 materials, substances, or items not considered to be part of the commodity, which include but
21 are not limited to containers, conveyances, bags, wrappers, packaging material, labels, individual
22 piece coverings, decorative accompaniments and coupons **and packaging materials**;

23 [(6)] (7) "Package", any commodity **of standard package or random package** enclosed
24 in a container or wrapped in any manner in advance of wholesale or retail sales, or whose weight
25 or measure has been determined in advance of wholesale or retail sale, and an individual item
26 or lot of any commodity on which there is marked a selling price based on an established price
27 per unit of weight or of measure, **shall be considered a package (or packages)**;

28 [(7)] (8) "Person", **includes** individuals, partnerships, corporations, companies, societies,
29 and associations;

30 [(8)] (9) "Point-of-sale system", [a point-of-sale system includes cash registers or devices
31 and systems capable of recovering stored information related to the price of individual retail
32 items] **an assembly of elements including a weighing or measuring element, indicating**
33 **element, and a recording element that may be equipped with a "scanner" used to complete**
34 **a direct sales transaction**;

35 [(9)] (10) "Primary standards", the physical standards of the state [which] **that** serve as
36 the legal reference from which all other standards [of] **for** weights and measures are derived;

37 [(10)] (11) "Random [package] **weight packages**", a package that is one of a lot,
38 shipment or delivery of packages of the same consumer commodity with no fixed pattern of
39 [weight or measure] **weights**;

40 [(11)] (12) "Sale from bulk", the sale of commodities when the quantity is determined
41 at the time of sale;

42 [(12)] (13) "Secondary standards", the physical standards used in the enforcement of
43 weights and measures laws and regulations which are traceable to the primary standards through
44 comparisons, using acceptable laboratory procedures;

45 [(13)] (14) "Standard package", a package that is one of a lot, shipment or delivery of
46 packages of the same commodity with identical net contents declarations;

47 [(14)] (15) "Weight", as used in connection with any commodity[,] **or service** means net
48 weight. Where the label declares that the product is sold by drained weight, the term means net
49 drained weight;

50 [(15)] (16) "Weights and measures", instruments and devices of every kind, used for
51 weighing[,] **and** measuring [and counting], and any appliance, accessory or object used with or
52 associated with the use of all such instruments and devices.

413.015. 1. There is established a "Division of Weights and Measures" within the
2 department of agriculture. There shall be a director of weights and measures and such other
3 necessary technical, supervisory and clerical personnel as may be required.

4 2. The compensation of all employees, the cost of all necessary equipment and supplies,
5 travel and contingent expenses for the division shall be paid from appropriations for these
6 purposes, made by the general assembly.

7 3. The division is charged with, but not limited to, performing the following functions
8 on behalf of the citizens of the state:

9 (1) Assuring that **weights and measures in** commercial [devices] **service** within the
10 state are suitable for their intended use, properly installed, accurate and are so maintained by
11 their owner or user;

12 (2) Preventing unfair or deceptive dealing by weight or measure in any commodity or
13 service advertised, **packaged**, sold or purchased within this state;

14 (3) Making available to all users of physical standards or weighing and measuring
15 equipment the precision calibration and **related** metrological certification capabilities of the
16 weights and measures facilities of the division;

17 (4) Promoting uniformity, to the extent practicable and desirable, between [the] **weights**
18 **and measures** requirements of this state and those of other states and federal agencies; and

19 (5) Encouraging and promoting **desirable** economic and agricultural growth while
20 protecting the public through the adoption by rule of weights and measures requirements as
21 necessary to assure equity among buyers and sellers.

413.055. The specification, tolerances, and other technical requirements for commercial
2 weighing and measuring devices as adopted by the National Conference on Weights and
3 Measures and published in the most recent edition of National Institute of Standards and
4 Technology Handbook 44, "Specifications, Tolerances, and Other Technical Requirements for
5 Commercial Weighing and Measuring Devices", **and supplement thereto or revision thereof**,
6 shall apply to commercial weighing and measuring devices in this state, except insofar as
7 modified or rejected by state regulations.

413.065. [1.] The director shall:

- 2 (1) Maintain the traceability of the state standards to the **national standards in the**
3 **possession of the** National Institute of Standards and Technology;
- 4 (2) Enforce the provisions of sections 413.005 to 413.229;
- 5 (3) Promulgate reasonable regulations for the enforcement of sections 413.005 to
6 413.229 in accordance with this section and chapter 536, RSMo;
- 7 (4) Prescribe, by regulation, requirements for packaging and labeling and method of sale
8 of commodities, adopt the Uniform Regulation for National Type Evaluation (NTEP) as
9 published by the National Institute of Standards and Technology (NIST) in Handbook 130, **and**
10 **supplements thereto or revisions thereof** [pertaining to weighing and measuring devices], and
11 may establish standards of weight, measure or count, requirements for unit pricing, open dating
12 information, and reasonable standards of fill for any packaged commodity;
- 13 (5) Test [the secondary] **annually the standards for weights and measures** used by any
14 city or county within this state, approve the same when found to be correct, reject those found
15 to be incorrect and not capable of adjustment, adjust any incorrect standard which is capable of
16 adjustment and approve same for use;
- 17 (6) Inspect and test weights and measures [kept,] **commercially used in determining**
18 **the weight, measure, or count of commodities, things sold,** offered, or exposed for sale **in**
19 **computing the basic charge or payment for services rendered on the basis of weight,**
20 **measure, or count;**
- 21 (7) Inspect and test all commercial devices at intervals deemed appropriate by the
22 director and specified by regulations promulgated under the authority of this chapter, except that
23 any subsequent test of the same device in the same calendar year shall be to retest a rejected
24 device, conducted in conjunction with an investigation, or at the request of the owner/operator
25 of the device;
- 26 (8) Test all [weighing and measuring devices] **weights and measures** used in checking
27 the receipts or disbursements [for] **of supplies in** every institution which is maintained with
28 funds appropriated by the general assembly;
- 29 (9) Approve for use, and mark **such commercial** weights and measures **as are** found to
30 be correct. Reject and mark as rejected **and order to be corrected, replaced, or removed such**
31 **commercial** weights and measures **as are** found to be incorrect. The director may seize **such**
32 **commercial** weights and measures that have been rejected and not corrected within the time
33 specified and have continued in commercial use, or are disposed of in a manner not specifically
34 authorized and may condemn and may seize **such** commercial weights and measures that are not
35 capable of being corrected;
- 36 (10) Weigh, measure, or inspect packaged commodities kept, offered, or exposed for

37 sale, sold, or in the process of delivery, to determine whether they contain the amounts
38 represented and whether they are kept, offered, or exposed for sale in accordance with sections
39 413.005 to 413.229 or regulations promulgated pursuant to sections 413.005 to 413.229. In
40 carrying out the provisions of this subdivision, the director shall employ recognized sampling
41 procedures, such as are [designated] **adopted by the National Conference on Weights and**
42 **Measures and are published** in the National Institute of Standards and Technology Handbook
43 133, "Checking the Net Contents of Packaged Goods";

44 (11) Prescribe, by regulation, the appropriate term or unit of weight [and] **or** measure
45 to be used, whenever [it is determined] **the director determines** in the case of a specific
46 commodity that an existing practice of declaring the quantity by weight, measure, numerical
47 count, or any combination thereof, does not facilitate value comparisons by consumers or offers
48 an opportunity for consumer confusion[.];

49 [2.] **(12)** No rule or portion of a rule promulgated under the authority of this chapter shall
50 become effective unless it has been promulgated pursuant to the provisions of section 536.024,
51 RSMo[.];

52 [3.] **(13)** The director may establish requirements for open dating information and may
53 promulgate regulations establishing a method of sale of commodities.

413.075. [1.] When necessary for the enforcement of sections 413.005 to 413.229 or
2 regulations promulgated under sections 413.005 to 413.229, the director may:

3 (1) Enter any commercial premises during normal business hours; except that, in the
4 event such premises are not open to the public, she/he shall first present his or her credentials and
5 obtain consent before making entry thereto, unless a search warrant has previously been
6 obtained;

7 (2) Seize, for use as evidence, without formal warrant, any incorrect or unapproved
8 weight, measure, package, or commodity found to be used, retained, offered, or exposed for sale
9 or sold in violation of the provisions of sections 413.005 to 413.229 or regulations promulgated
10 thereunder;

11 (3) Stop any commercial vehicle, present his or her credentials, inspect the contents, and
12 require the person in charge of that vehicle to produce any documents in his or her possession
13 concerning the contents, and may require such person to proceed with the vehicle to some
14 specified place for a more thorough inspection;

15 (4) Verify advertised prices and point-of-sale systems, as deemed necessary to determine
16 the accuracy of prices and computations and the correct [operation] **use** of the equipment, and
17 if such systems utilize scanning or coding means in lieu of manual entry, the accuracy of [the]
18 **price printed or recalled from a** database. In carrying out the provisions of this section, the
19 director shall employ recognized procedures, such as are designated in the most recent edition

20 of National Institute of Standards and Technology Handbook 130, "**Examination Procedures**
21 **for Price Verification**"; issue necessary rules and regulations regarding the accuracy of advertised
22 prices and automated systems for retail price charging (**referred to as "point-of-sale systems"**)
23 for the enforcement of this section which shall have the force and effect of law; and conduct
24 investigations to ensure compliance;

25 (5) Grant any exemptions from the provisions of sections 413.005 to 413.229 or any
26 regulations promulgated thereunder, when appropriate to the maintenance of good commercial
27 practices[.];

28 [2. The director may] (6) Issue stop sale, stop use, hold or removal orders with respect
29 to any weights and measures [unlawfully] **commercially** used, to any packaged or bulk
30 commodities kept, offered or exposed for sale contrary to the provisions of this act, and cease
31 and desist orders with respect to any practices made unlawful by this chapter, which order shall
32 remain in effect until sections 413.005 to 413.229 have been complied with. The owner or
33 operator of the business or operation to which the order was issued shall have the right to take
34 such steps necessary to bring the device, commodity or practice into compliance, and shall also
35 have the right to appeal from such order to the circuit court of the county in which the order was
36 issued. Failure to comply with the provisions of the order shall be deemed an unlawful act.

413.085. Weights and measures officials of any county or city shall perform the same
2 duties as are imposed on the director by subdivisions (7) to (11) of subsection 1 of section
3 413.065, and except for subdivision (5) of subsection 1 of section 413.075 shall have the same
4 powers granted to the director by section 413.075. These powers and duties shall extend to their
5 respective jurisdictions; except that, the jurisdiction of a county **official** shall not extend into a
6 city nor a city into a county which has a weights and measures program of its own. The
7 foregoing provisions notwithstanding, the director shall have concurrent authority to enforce the
8 provisions of sections 413.005 to 413.229 in any city or county within this state.

413.115. A person commits the crime of deceptive business practice if in the course of
2 engaging in a business, occupation or profession, he or she recklessly:

3 (1) Uses commercially an incorrect, rejected or condemned weight or measure, or any
4 other device for falsely determining or recording any quality or quantity; or

5 (2) Sells, offers or exposes for sale, or delivers less than the represented quantity of any
6 commodity or service; or

7 (3) Takes or attempts to take more than the represented quantity of any commodity or
8 service when as buyer he or she furnishes the weight or measure by means of which the quantity
9 is determined; or

10 (4) Sells, offers or exposes for sale misbranded commodities; or

11 (5) Misrepresents the quantity or price of any commodity or service sold, offered,

12 exposed or advertised for sale, rent or lease by weight, measure or count.

413.125. All bulk sales in which the buyer and seller are not both present to witness the
2 measurement shall be accompanied by a delivery ticket containing the following information:

3 (1) The name and address of the buyer and the seller;

4 (2) The date delivered;

5 (3) The quantity delivered and the quantity upon which the price is based, if this differs
6 from the delivered quantity;

7 (4) The identity in the most descriptive terms commercially practicable, including any
8 quality representation made in connection with the sale;

9 (5) The count of [individual] **individually wrapped** packages, if more than one,
10 **including commodities bought from the bulk but delivered in packages.**

413.135. No person shall:

2 (1) Sell, offer for sale or install for use as a commercial device any incorrect weight or
3 measure;

4 (2) Remove from any weight or measure any tag, seal or mark placed thereon by the
5 director, without written authorization from the director;

6 (3) Dispose of any rejected or condemned weight or measure in a manner contrary to law
7 or regulation;

8 (4) Obstruct, hinder, impair or prevent the performance of a governmental function by
9 a weights and measures official by the use or threat of violence, force or other physical
10 interference or obstacle;

11 (5) Use, or have in possession for current use as a commercial device, any weight or
12 measure that has not been inspected and sealed by the director within the time specified by this
13 act or regulation promulgated hereunder, except that this subdivision does not apply if the
14 director has been notified that a device is available for inspection or reinspection and the director
15 grants or has granted authorization for its temporary commercial use pending an official
16 inspection;

17 (6) Use in retail trade a weight or measure that is not positioned so that its indications
18 may be accurately read and the weighing or measuring operation observed from some position
19 which may be reasonably assumed by [a] **the customer and operator**. Devices used for medical
20 prescription and those used exclusively to prepare packages in advance of retail sale are exempt
21 from this requirement;

22 (7) Keep for the purpose of sale, advertise, offer or expose for sale or sell any
23 commodity, thing or service in a condition or manner contrary to law or regulation.

413.145. Except as otherwise provided in sections 413.005 to 413.229 or by regulations
2 promulgated thereunder, any package **whether a random or a standard package**, kept for the

3 purpose of sale, or offer or exposure for sale, shall bear on the outside of the package a definite,
4 plain, and conspicuous declaration of:

5 (1) The identity of the commodity in the package, unless the same can easily be
6 identified through the wrapper or container;

7 (2) The quantity of contents in terms of weight, measure, or count; and

8 (3) The name and place of business of the manufacturer, packer or distributor, in the case
9 of any package kept, offered or exposed for sale, or sold in any place other than on the premises
10 where packed.

413.155. In addition to the declarations required by section 413.145, any package [which
2 is] **being** one of a lot containing random weights of the same commodity [and bearing the total
3 selling price of the package], **at the time it is offered or exposed for sale at retail**, shall bear
4 on the outside of the package a plain and conspicuous declaration of the price per [single unit of
5 weight] **kilogram or pound and the total selling price of the package**.

413.165. A representation or an advertisement for the sale of a commodity by weight,
2 measure or count, whether packaged or unpackaged, which states the retail price, shall also
3 contain a clear and conspicuous declaration of the quantity in terms of weight, measure or count,
4 to include any size or dimension designation. Where a dual declaration is required, only the
5 declaration that sets forth the quantity in terms of the [smaller] **largest whole unit with any**
6 **remainder expressed in fractions** of weight or measure **required by law or regulation to**
7 **appear on the package** need appear in the advertisement.

413.225. 1. There is established a fee for registration, inspection and calibration services
2 performed by the division of weights and measures. The fees are due at the time the service is
3 rendered and shall be paid to the director by the person receiving the service. The director shall
4 collect fees according to the following schedule and shall deposit them with the state treasurer
5 into general revenue for the use of the state of Missouri:

6 (1) From August 28, 1994, until the next January first, laboratory fees for metrology
7 calibrations shall be at the rate of twenty-five dollars per hour for tolerance testing and thirty-five
8 dollars per hour for precision calibration. Time periods over one hour shall be computed to the
9 nearest hour. On the first day of January, 1995, and each year thereafter, the director of
10 agriculture shall ascertain the total receipts and expenses for the metrology calibrations during
11 the preceding year and shall fix a fee schedule for the ensuing year at a rate per hour which shall
12 not exceed sixty dollars per hour for either method but shall not be less than twenty-five dollars
13 per hour for tolerance testing and thirty-five dollars per hour for precision calibration, as will
14 yield revenue not more than the total cost of operating the metrology laboratory during the
15 ensuing year;

16 (2) From August 28, 1994, until the next January first, all scale test fees shall be charged

17 as follows:

18 (a) Small scales shall be five dollars for each counter scale, ten dollars for platform
19 scales up to one thousand-pound capacity, and twenty dollars for each platform scale over one
20 thousand-pound capacity;

21 (b) Vehicle scales shall be fifty dollars each for the initial test and seventy-five dollars
22 for each subsequent test within the same calendar year;

23 (c) Livestock scales shall be seventy-five dollars each for the initial test, and one hundred
24 dollars for each subsequent test within the same calendar year;

25 (d) Hopper scales with a capacity of one thousand pounds or less shall be ten dollars
26 each; for each hopper scale with a capacity of more than one thousand pounds up to and
27 including two thousand pounds, the fee shall be twenty dollars; for each hopper scale with a
28 capacity of more than two thousand pounds up to and including ten thousand pounds, the fee
29 shall be fifty dollars; and for those hopper scales with a capacity of more than ten thousand
30 pounds, the test fee shall be seventy-five dollars each;

31 (e) Railroad scales shall be fifty dollars each;

32 (f) Monorail scales shall be twenty-five dollars each for the initial test and fifty dollars
33 for each subsequent test in the same calendar year;

34 (g) Participation in on-site field evaluations of devices for National Type Evaluation
35 Program certification and all tests of in-motion scales including but not limited to vehicle,
36 railroad and belt conveyor scales will be charged at the rate of thirty dollars per hour, plus
37 mileage from the inspector's official domicile to and from the inspection site. The time shall
38 begin when the state inspector performing the inspection arrives at the site to be inspected and
39 shall end when the final report is signed by the owner/operator and the inspector departs;

40 (3) From August 28, 1994, until the next January first, certification of taximeters shall
41 be five dollars per meter; timing devices, five dollars per device; fabric-measuring devices, wire-
42 and cordage-measuring devices, five dollars per device; milk for quantity determination,
43 twenty-five dollars per plant inspected;

44 (4) From August 28, 1994, until the next January first, certification of vehicle tank
45 meters shall be twenty-five dollars each for the initial test and fifty dollars for each subsequent
46 test in the same calendar year;

47 (5) Every person shall register each location of such person's place of business where
48 devices or instruments are used to ascertain the moisture content of grains and seeds offered for
49 sale, processing or storage in this state with the director and shall pay a registration fee of ten
50 dollars for each location so registered and a fee of five dollars for each additional device or
51 instrument at such location. Thereafter, by January thirty-first of each year, each person who is
52 required to register pursuant to this subdivision shall pay an annual fee of ten dollars for each

53 location so registered and an additional five dollars for each additional machine at each location.
54 The fee on newly purchased devices shall be paid within thirty days after the date of purchase.
55 Application for registration of a place of business shall be made on forms provided by the
56 director and shall require information concerning the make, model and serial number of the
57 device and such other information as the director shall deem necessary. Provided, however, this
58 subsection shall not apply to moisture-measuring devices used exclusively for the purpose of
59 obtaining information necessary to manufacturing processes involving plant products. In
60 addition to fees required by this subdivision, a fee of ten dollars shall be charged for each device
61 subject to retest.

62 2. On the first day of January, 1995, and each year thereafter, the director of agriculture
63 shall ascertain the total receipts and expenses for the testing of weighing and measuring devices
64 referred to in subdivisions (2), (3), (4) and (5) of subsection 1 of this section and shall fix the
65 fees or rate per hour for such weighing and measuring devices to derive revenue not more than
66 the total cost of the operation, but such fees shall not be fixed in amounts less than the amounts
67 contained in subdivisions (2), (3), (4) and (5) of subsection 1 of this section.

68 3. Except as indicated in subdivision (2)(b)(c) and (f) and subdivisions (4) and (5) of
69 subsection 1, retests for any device within the same calendar year will be charged at the same rate
70 as the initial test. Devices being retested in the same calendar year as a result of rejection and
71 repair are exempt from the requirements of this subsection.

72 4. [Fees not paid within thirty days from the date of the original invoice shall bear
73 interest of one percent per month until the total amount is paid.] **All device inspection fees shall**
74 **be paid within thirty days of the issuance of the original invoice.** Any fee not paid within
75 ninety days after the date of the original invoice [will be assessed a penalty of one hundred
76 dollars in addition to the one percent interest per month. Fees plus interest and penalty not paid
77 prior to the next scheduled inspection] will be cause for the director to deem the device as
78 incorrect and it [shall] **may** be condemned and taken out of service, and may be seized by the
79 director until all fees [and penalties] are paid.

80 5. No fee provided for by this section shall be required of any person owning or
81 operating a moisture-measuring device or instrument who uses such device or instrument solely
82 in agricultural or horticultural operations on such person's own land, and not in performing
83 services, whether with or without compensation, for another person.

413.227. 1. Any person found to be in violation of any provision of this chapter shall
2 be issued a notice of violation. The notice shall state the date issued, the name and address of
3 the person to whom issued, the nature of the violation, the statute or regulation violated, and the
4 name and position of the person issuing the notice. The notice shall also contain a warning that
5 the violation may result in an informal or formal administrative hearing or both.

- 6 2. Any person issued a notice of violation may be afforded an opportunity by the director
7 to explain such facts at an informal hearing to be conducted within fourteen days of such
8 notification. In the event that such person fails to timely respond to such notification or upon
9 unsuccessful resolution of any issues relating to an alleged violation, such person may be
10 summoned to a formal administrative hearing before the director or a designated hearing officer
11 conducted in conformance with chapter 536, RSMo, and [if found to have committed two or
12 more violations within twelve months,] may be ordered to cease and desist from such violations,
13 such order may be enforced in the circuit court, and, in addition, may be required to pay a penalty
14 of not more than five hundred dollars per violation. Any party to such hearing aggrieved by a
15 determination of a hearing officer may appeal to the circuit court of the county in which the party
16 resides, or if the party is the state, in Cole County, in accordance with chapter 536, RSMo.
- 17 3. Any penalty assessed and collected by the director shall be deposited with the state
18 treasurer to the credit of the [general revenue fund of the state]**state school moneys fund**.
- 19 4. Undercharges to consumers are not violations pursuant to this section.